

CITY OF MUSKEGON  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES

July 13, 2004

Chairman S. Schiller called the meeting to order at 4:04 p.m., and roll was taken.

MEMBERS PRESENT: S. Schiller, R. Hilt, E. Fordham, J. Clingman-Scott, B. Larson

MEMBERS ABSENT: C. Kufta, excused; R. Schweifler

STAFF PRESENT: B. Lazor, H. Griffith

OTHERS PRESENT: T. Schumaker, 1441 Kingsley; E. Strum, Health Safety for Honeywell Plant; L. DeVoogd, 3176 Boltwood; P. LeBlanc, LSL; T. Metzdorf, Beta Design.

APPROVAL OF MINUTES

A motion to approve the minutes of the regular meeting of June 8, 2004, was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2004-21: Variance request to allow an already constructed metal shed closer than the required three foot rear (alley) setback at 1441 Kingsley, by Thomas Schumaker. B. Lazor presented the staff report. The subject property is located mid block in a residential area between Catawba and Kampenga. The property is 6250sqft. This property has two separate multiple variances that go along with it. The property owner has placed two metal structures on the property. The first one is considered a shed because it is storing lawn equipment. The second structure, which is case 2004-22, is considered an automobile structure. In summary, this property contains one principal structure (the house), one shed, and two automobile storage structures. All of these structures are already located on the lot. The applicant did not apply for any permits before doing this work. The applicant, however, is now working with the city on this situation. The property is being used for residential purposes. The property directly behind it is a used appliance store. Residential uses surround the property on all other sides. The ordinance requires that accessory structures need to be at least three feet from the property line. The applicant has supplied a drawing indicating that the shed is 8" away from the property line. The shed is also made of metal which is not a residential quality construction. This is generally geared for industrial applications. The shed is however, enclosed inside of a yard with an obscuring fence. The reasoning behind the ordinance requirement of the residential design quality was to prevent pole barn style structures from entering residential areas because they generally do not match the look of the surrounding structures. Staff has received the following public comments: 1) Wayne Willemsen of 1421 Kingsley phone in on 6/30 to say he has lived

here for 14 years. The sheds do not bother him a bit. The applicant is always willing to help. The sheds are not hurting anything. He sees no reason at all that they shouldn't be able to stay. He has best looking lot in 3 block radius – Beautiful Yard. 2) Donnie and Sheryl Morey of 860 Kampenga Ave wrote a letter on 6/29 saying that “in consideration of the immaculate, excellent, care and upkeep of sheds, buildings, yard, home and property of resident. I feel he is an asset and plus to the neighborhood, therefore we have absolutely no problem with him Keeping his buildings (sheds) structures where they are, or how many.” 3) The Leloff's of 1461 Kingsley wrote an email on 7/1 to say: “Hi I live at 1461 Kingsley When you live in the city with the crime and the drug's you some times have to do things a little different to protect what you have so that means extra building or porches and if the surround neighbors don't have a problem with it then I don't see why any one should there are all kinds of rules in life but some need to be able to bend when in need. Mr. shoemaker has live in this area a long time and always keeps his home and yard in good repair. I hate to see him go because he can not keep his thing lock up and safe. I have lived here 25 yr. and seen a lot of good and bad move in to this area if we keep picking on the good where going to end up with nothing but mad.” 4) Janet Domine of 1484 Kingsley called on 6/30 to say “She thought the letter was referring to her shed on her property, once she knew where the address was, then she was fine with it.”

T. Schumaker provided the commission members with proof that he had purchased part of the neighbor's property as well as pictures of the structures on the property. He also provided commission members with pictures of structures near his property having similar circumstances (metal and/or placement). He explained his need to have the garage and that it does have the required snow load capabilities.

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

J. Clingman-Scott asked if the request is approved, and as the buildings age, can they be replaced or would they need to seek a new variance. B. Lazor stated that they would be able to replace them because the variance stays with the property. J. Clingman-Scott suggested adding a condition that when the buildings become obsolete and are removed, they wouldn't be allowed to be replaced other than what is approved under the zoning ordinance at that time.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because they don't have a driveway. The garage was built in 1962 with a size of 16X22 which was considered a stall and a half. Now, that size isn't considered a single stall (which is 16X24). The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because there are other property owners in the area that have more than 1 detached structure. Some are made of similar materials as this. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the carports help the applicant to store the lawn equipment that is needed to maintain the property. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or

by any previous owner because the ordinance doesn't take into consideration a person's hobbies or insurance stating that certain hobbies need to be stored in an enclosed area when not in use. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is an expense to this request. The requested variance is the minimum action required to eliminate the difficulty because he would be able to keep his cars in a sheltered area as required by his insurance company.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow an already constructed metal shed with a rear setback of 8" at 1441 Kingsley, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) That the building must comply with the building code or the variance is void. 4) When the structure becomes obsolete or removed, it can only be replaced with what meets the zoning ordinance requirements at the time of replacement, was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

Hearing, Case 2004-22: Variance request to allow a secondary metal sided vehicular storage structure closer than the required three foot side and rear (alley) setback at 1441 Kingsley, by Thomas Schumaker. B. Lazor presented the staff report. The Zoning Ordinance requires that accessory structures be at least 3 feet from the property line. The second vehicular storage facility is less than that. The applicant indicates that the structure is 8" from the property line. This structure is also constructed of metal and does not meet the definition of residential construction that is properly painted and sided. The applicant has indicated that the insurance provider requires that his vehicle must be stored in a garage when not in use.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow an already constructed metal sided secondary vehicular storage facility with a side setback of 8" and a rear setback of 8" at 1441 Kingsley be approved, based on the findings of fact from the previous case, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The structure must comply with the building code or the variance is void. 4) When the structure becomes obsolete or removed, it can only be replaced with what meets the zoning ordinance requirements at the time of replacement, was made by J. Clingman-Scott, supported by B. Larson and unanimously approved.

Hearing, Case 2004-23: Variance request to allow barbed wire to be installed on fence at 1953 South Harvey Street, by Eric Strum. B. Lazor presented the staff report. This is a large 18 acre piece of property located near US-31 at the intersection of Harvey and Keating. The property contains several buildings and a large wooded area. Honeywell INC owns the property and they are a chemical plant. The property is located next to the City of Muskegon Department of Public Works. It shares a common fence line. According to the applicant, during a security self assessment that is required by Honeywell and the American Chemistry Council, the addition of barbed wire would enhance security to this facility that processes and stores flammable and toxic products. The applicant also points out that there are several industries around the Honeywell plant that have barbed wire around their plants. This property is fairly isolated near the

expressway and there are very little residential uses in the immediate facility. There is a section of Muskegon Township that runs next to the plant. Staff is unaware as to what that zoning is. Staff feels that if the ZBA were inclined to grant the variance for the installation of the barbed wire, the wire should be installed in such a way as to only interfere with people climbing the fence. This may be accomplished by tipping the wire in towards the property, if that still gives the plant the security they need. Staff has received the following public comments: Larry W. Sawyer, plant manager of Dana Corp. Perfect Circle Div of 2051 S. Harvey Street wrote an email on July 6, 2003 to say: "I have received your mailing in reference to the Zoning Board public hearing on the adding barbed wire to existing fence at 1953 S. Harvey. I have no objections with this and think that it is a good idea." Staff also received an e-mail from Bob Fountain of the Department of Public Works in favor of the variance.

E. Strum explained the need for the barbed wire and how they are working on making the necessary safety precautions since the 9/11 attacks. R. Hilt asked if they have experienced any security problems. E. Strum stated that he had only been working there for a year, and doesn't know of any during that time.

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

The commission members discussed whether to add a condition of which way the barbed wire should be placed (i.e. tilted inside, straight up, or to the outside of the fence).

The following findings of fact were offered. There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the existing perimeter fencing has no barbed wire along the top to deter unauthorized entry. This was identified during a self-assessment of security vulnerabilities as required by Honeywell and the American Chemistry Council. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because most industrial and commercial neighbors have barbed wire along the top of their perimeter fencing to better deter unauthorized entry. Some of those neighbors include Dana Corporation, ESCO, Lorin, APEC, Theka Associates, and Beacon Recycling. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because if it is approved, installation will be performed by a qualified fencing contractor in accordance with specifications for safe design and overseen by a Honeywell project engineer. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because industrial security measures are being enhanced nationwide at chemical manufacturing plants. Honeywell Burdick & Jackson would like to have perimeter fencing that would more effectively hinder unauthorized access to equipment storing or processing flammable and toxic materials. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the purpose of this variance is to enhance the site security by deterring unauthorized entry. Honeywell International has a goal to be a good corporate citizen in the communities in which it operates. One way of carrying out

that goal is to take reasonable steps to enhance security. The requested variance is the minimum action required to eliminate the difficulty because the fence in its existing fashion could be easily scaled giving potential terrorists access to tanks and vessels containing hazardous materials. Estimates for total replacement of the fence were cost prohibitive. Installation of barbed wire along the top of the existing fence was a more reasonable alternative and one that is consistent with commercial/industrial neighbors and other Honeywell plants.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow the installation of barbed wire on the existing perimeter fence at 1953 S. Harvey Street, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by R. Hilt, supported by J. Clingman-Scott and unanimously approved.

Hearing, Case 2004-24: Variance request to reduce the rear setback to 19 feet and the side setback to 11 feet for a partially constructed second floor deck at 3387 Fulton Avenue, by Thom DeVoogd. B. Lazor presented the staff report. The property is addressed from Fulton Street, however it fronts on a 12' easement also described as Fulton Street as seen in the supplied survey. The property is an irregular shape with 5326 square. The rear of the property slopes down from Fulton Street to the bottom floor of the house. There is natural vegetation that somewhat blocks the view of the partially constructed deck during the growing season. The deck projects out from the house 6 feet on the side and back. There is 19 feet instead of the required 30 feet between the rear of the deck and the rear lot line There is 11 feet instead of the required 12 feet between the side of the deck and the side lot line. Section 2307 of the Zoning Ordinance (Permitted yards encroachments) states: Patios, porches and decks: Patios and uncovered decks no more than two feet above grade may be built to the rear or side property line where an established fence line exists. If no established fence line exists, patios and uncovered decks no more than two feet above grade must be a minimum of three (3) feet from rear and side property lines. All decks or porches more than two feet above grade, must comply with the setback requirements of the principal structure. [amended 7/03] However since this is deck that is more than two feet above grade, it must meet the principal structure setback. The property contains an existing deck. This is an extension of that deck. The applicant provided a statement that this deck will serve as an exterior space for family dinners. Staff received an e-mail from Bill McNiff of 3404 Fulton stating he is in favor of the request.

B. Larson asked if the easement was what caused the need for the variance request. B. Lazor stated that it wasn't. J. Clingman-Scott asked for some clarification regarding a neighboring property. B. Lazor explained it. S. Schiller asked why a permit hadn't been obtained for the deck. L. DeVoogd stated that the builder was told to, but didn't

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

E. Fordham asked if the permit had since been applied for. B. Lazor stated that they are waiting to see if the variance is granted. J. Clingman-Scott stated that she didn't feel there would be any encroachment issues for the neighbors due to this request.

The Following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because they are located on a corner lot that has odd lot lines. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because they have taken the liberty of landscaping the City property and putting structures such as sheds and fences off the lot lines. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because it would have no affect on the neighbors. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the ordinance doesn't take into consideration odd shaped lots. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because the deck is an expense that the owner would like to have in order to have a nice deck for their family dinners. The requested variance is the minimum action required to eliminate the difficulty because the design is important to them.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the rear setback to 19 feet and the side setback to 11 feet for a new deck at 3387 Fulton Street, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by J. Clingman-Scott, supported by R. Hilt and approved with S. Schiller voting nay.

Hearing, Case 2004-25: Variance request to allow the removal of non-conforming lighting fixtures and reinstalling the fixtures at various location on the Hackley Hospital Campus 1700 Clinton, by Hackley Hospital (Gerry Adams). B. Lazor presented the staff report. Hackley Hospital is at the beginning stage of revising the entire hospital campus. The brand new emergency center is getting ready to open to the public. The Hospital is undertaking a project to make the area into a campus. The Planning Commission and City Commission have recently vacated several streets inside the hospital perimeter. The Planning Commission has granted conditional approval for a new entrance drive off of Laketon and parking lot reorganization. These projects are expected to start in the near future. New buildings are also being discussed. To help with the new campus objective, the hospital is requesting a variance to take down existing lighting fixtures and reinstall many of them across the campus. The main reason these fixtures need a variance is because they are taller than the required 25' height limit. The zoning ordinance is designed for gradual elimination of non-conforming structures. The non-conforming use language is mainly geared towards buildings. The language can also be applied to structures such as lighting posts that are not conforming to the current language. In essence, this variance, if approved, would be to allow the hospital to install non-conforming lighting structure on the property. The applicant states that there are currently 72 light poles on site. 21 of the poles will be removed and not re-installed therefore 51 poles will remain. Of those, 35 poles are proposed to be redistributed throughout the site. New heads are proposed to be installed on the tops with what appear to have a down type light with 100% cutoff. To meet ordinance standards, the lights will need to be a warm white or natural lamp color. The applicant has supplied two drawings

showing the new layout of the parking areas and the proposed layout for the new lights. It appears from the photometric plan that the light will not bleed off of the property to a great extent and that would be consistent with the Zoning Ordinance. Staff has not received any public comments.

P. LeBlanc explained the project. T. Metzdorf provided some displays of where the lights currently are as well as where they would like to have them. The new fixtures are a cut off and the light would be aimed appropriately. He showed a display of how much light they would give off and how it would be controlled. E. Fordham asked if this would be done in phases. T. Metzdorf explained how the phases would be. The bids have been returned and they will be completed by next summer.

A motion to close the public hearing was made by R. Hilt, supported by B. Larson and unanimously approved.

E. Fordham stated that he is a volunteer driver there and feels it would be an improvement.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because they are requesting permission to reduce the number of non-conforming light poles and to relocate the remaining poles in a uniform manner throughout the campus in order to foster a highly attractive, consistent, campus design theme. Presently, the site possesses seventy-two light poles. Of these, twenty-one will be removed resulting in fifty-one remaining poles. Of the remaining poles, thirty-five will be relocated. These include four poles having a height of 25'4" and thirty-one poles with a height of 30'5". Prior to relocation, all light poles will be refurbished and painted black to match the design of the fence treatment along the hospital's campus perimeter. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because they have the authority to maintain the existing non-conforming light poles and, therefore, is not being denied a substantial property right possessed by other properties in the same zoning district and in the vicinity. In this case, Hackley Hospital is requesting permission to reduce the number of non-conforming light poles and to relocate the remaining poles in a uniform manner throughout the campus in order to foster a highly attractive, consistent, campus design theme. Prior to relocation, all light poles will be refurbished and painted black. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because it will reduce the number of non-conforming light poles. Twenty-one light poles having a height greater than permitted by ordinance will be removed. The poles will not be replaced. Allow the remaining poles to be arranged in a consistent, well-planned, design theme. Provide opportunity for the proper placement of light so as to prevent off-site light spillage. Allow the hospital to provide an adequate level of light coverage for purposes of patron and employee safety and security. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because all of the pre-existing, non-conforming, lights were in place prior to the enactment of the present regulatory standards. At the time of placement, all lights were consistent with City standards.

The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because although, they will be refurbished and repainted, the current light poles are in very good condition, suitable for continued use. Their use is not intended to result in greater profitability to the hospital. Their use will provide opportunity to reduce site development costs, should the hospital be required to purchase new light poles. The requested variance is the minimum action required to eliminate the difficulty because the reduction in light poles and the rearrangement of the remaining poles reflects the minimum necessary to provide adequate lighting for the campus to pursuant to patron and employee safety and security.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow the re-installation of lighting fixtures as proposed at 1700 Clinton (Hackley Hospital Campus), be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by E. Fordham, supported by R. Hilt and unanimously approved.

#### OTHER

There being no further business, the meeting was adjourned at 4:50 p.m.

hmg